

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

Civil Action No. 3:16cv34CWR-FKB

THIRD COAST TOWING, LLC,
GREAT AMERICAN INSURANCE
AND NATURE'S WAY MARINE, LLC

Defendants

AND

GREAT AMERICAN INSURANCE
COMPANY

Cross-Claimant

v.

THIRD COAST TOWING, LLC

Cross-Defendant

AND

GREAT AMERICAN INSURANCE
COMPANY

Third Party Plaintiff

v.

AMERICAN STEAMSHIP OWNERS
MUTUAL PROTECTION & INDEMNITY
ASSOCIATION, INC. (THE AMERICAN
CLUB)

Third Party Defendant

**PLAINTIFF UNITED STATES' MOTION TO DISMISS COUNTERCLAIM OF
NATURE'S WAY MARINE AND ENVIRONMENTAL POLLUTION GROUP
UNDER FED. R. CIV. P. 12(b)(6)**

On January 22, 2016, the United States filed its complaint against Nature's Way Marine, LLC and Third Coast Towing, LLC for recovery of \$792,868.98 of oil spill removal costs and, in addition, civil penalties arising from the discharge of oil released into the Mississippi River from a tank barge owned by Third Coast and propelled by a tugboat owned by Nature's Way. Nature's Way and its insurer, Environmental Pollution Group, LLC ("collectively "Nature's Way"), filed a counterclaim against the United States seeking "equitable and declaratory relief" because the National Pollution Funds Center ("NPFC") of the United States Coast Guard denied Nature's Way's administrative claim of \$2,138,382.14 for reimbursement of oil spill cleanup costs. Counterclaimants request this Court to find that the NPFC's denial was arbitrary and capricious, enter a judgment in the amount of \$2,138,382.15, and "abate or off-set" the United States' claim against this amount. Nature's Way further asks this Court to grant a trial *de novo*. As explained in the United States' Memorandum in support of this Motion, Nature's Way is not entitled to the remedies it seeks, as a matter of law, because its counterclaim is an appeal of a final administrative determination cognizable only under the Administrative Procedure Act ("APA"). Accordingly, the United States respectfully moves this Court to dismiss the counterclaim under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

Dated: May 13, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 13, 2016, I served the foregoing Plaintiff United States of America's Motion to Dismiss on the following counsel of record by way of the CM/ECF system which will provide each counsel a copy by electronic mail.

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